



# PLANNING AND COMMUNITY DEVELOPMENT

Quality Services for a Quality Community

---

## MEMORANDUM

**TO:** George Lahanas, City Manager

**FROM:** Darcy C. Schmitt, Planning and Zoning Administrator

**DATE:** September 20, 2012

**SUBJECT:** Nonconforming Use of Buildings

---

City of East Lansing  
PLANNING AND  
COMMUNITY  
DEVELOPMENT  
410 Abbot Road  
East Lansing, MI 48823  
  
(517) 319-6930  
[www.cityofeastlansing.com](http://www.cityofeastlansing.com)

The following is a summary of an ongoing discussion concerning the “Nonconforming Use of Buildings” section in the Zoning Code and how it affects rental properties. The “Rental Property Owners of East Lansing” submitted a request to City Council urging them to modify the City’s Zoning Code to exempt rental properties that are nonconforming in use from the restrictions of the City’s nonconforming use clause.

Generally, they expressed that the clause does not allow them to remain competitive with other new rental properties within and outside of the City, which provide a bedroom for each allowed tenant and more than one bathroom, because of their inability to structurally alter nonconforming properties.

In response to this request, the City Council asked Staff to draft an ordinance (attached) with a sunset clause to allow rental properties which are nonconforming in use to make structural alterations. They have also asked Staff to provide pros and cons to adopting such an ordinance.

The following is a summary of state law, local regulation, history of ordinance changes which lead to the nonconforming uses of the properties, and Staff’s analysis of allowing these properties to be exempt from nonconforming use regulations.

### Introduction

The legal nonconformity that is created by a change to the code is typically referred to as being “grandfathered”. The “grandfathered” properties that the rental property owners have referred to are structures with nonconforming uses – a single-family rental house licensed for four (4) unrelated persons where the current zoning only allows for two (2) unrelated persons or a family. These uses which are currently located in single-family residential districts were either licensed at a time when four (4) unrelated persons were allowed in a single-family district, or were zoned in a

September 20, 2012

multiple-family district at the time they were first licensed. Both circumstances would render the use of the structure nonconforming and prevent the structure from being enlarged or the use extended into an area of the structure that was not arranged or designed for such use at the time of the adoption of Ordinance 900 in 1997.

Ordinance 900 changed the maximum allowed occupancy in a rental property in a single-family residential district to a family or two (2) unrelated persons as defined by the City's Code. Thus preventing an addition to the structure whether it is horizontal or vertical and the conversion of a basement to bedrooms or other living space.

Based on the current Code, properties that are nonconforming in use are allowed to be enlarged or extended; however, the property would then be required to conform to the current rental license requirements for a single-family zoning district which is a family or two (2) unrelated persons.

### **State Zoning Enabling Act (MZEa) - Planning Law**

When amendments are made to a zoning code that render a structure or use within a structure nonconforming, the Michigan Zoning Enabling Act (MZEa) **requires** that the use of the structure or a structure be allowed to remain as it had in the past. However, the Act **allows** a city to place restrictions on a nonconforming use of a structure or structure relative to their completion, resumption, restoration, reconstruction, or extension. Furthermore, Article II, Section 125.3201(4) of the MZEa states the following:

The **elimination** of the nonconforming uses and structures in a zoning district is declared to be for a public purpose and for a public use.

### **Nonconforming Use of Buildings**

The City treats a nonconforming building - which is a building or structure that does not meet the dimensional requirements of the Code, and nonconforming use of a building - which is a use of a building or structure that is no longer conforming to the Code, differently. It is usually the desire that a nonconforming building or a nonconforming use eventually become conforming. The City of East Lansing's nonconforming use language has not changed significantly since 1978 and was written with the intent of eventually eliminating a nonconforming use which is not uncommon for zoning codes in Michigan and throughout the country.

The City of East Lansing's Zoning Code excerpt below is referring to the nonconforming use of a building and is clear in its intent that a building shall not be structurally altered, enlarged or extended unless it is to keep a structure in sound condition or it is the intent that the use is changed to meet current use requirements of the district.

Sec. 50-853. Nonconforming use of buildings.

- (a) A structure, the use of which does not conform to the use regulations for the district in which it is situated, shall not be enlarged or extended **unless the use therein is changed to a conforming use.**
- (b) Such nonconforming structure shall not be structurally altered or reconstructed unless such alterations are required by law, provided, however, that such maintenance and repair work as is required to keep a nonconforming structure in sound condition shall be permitted.
- (c) A nonconforming use may be extended throughout any parts of the structure which were **manifestly arranged or designed for such use** at the time of the adoption of the ordinance from which this chapter is derived, **provided this extension was made within one year after the date of such adoption.**

### History of Relevant Code Changes

The City has a long history of code amendments, which were made in an attempt to ***balance the need for student housing and the desire to maintain strong, stable neighborhoods***. There are two types of code amendments that are most applicable to the properties in question. The first relates to the allowed occupancy of a rental property at the time it was first licensed and the second is the zoning district in which the property was located at the time it was first licensed.

The first major Zoning Map change occurred in **1966** when substantial areas of the City's older neighborhoods were zoned to permit high density, multiple-family housing on the edges of the single-family neighborhoods to accommodate the student population and avoid undue concentration in the single-family neighborhoods. This change was done prior to having a rental licensing process in place. Multiple-family housing growth spurred by the upzonings of 1966 had a significant impact on the single-family character of the neighborhoods. As a result, by early 1970 the City downzoned several properties from multiple-family to single-family districts and denied multiple requests for upzonings of this type and continued to do so through most of the 1970's.

The most significant stabilization effort came about with the adoption of a new Housing Code in **1973**. The initial Code was targeted at ensuring safe and healthy housing conditions for occupants by addressing heating, electrical and plumbing systems; requirements for light, air and access; and basic cleanliness and maintenance standards. It also established the licensing requirement for rental housing, including annual inspections.

At the time the Housing Code was adopted, the City defined a family as a number of people related by blood or marriage, or one (1) person. This definition was combined with permitted roomers under the Code to determine occupancy limits for single and two-family dwelling units. Within the single and two-family districts, families were permitted to have a certain number of

roomers living with them. Single-family homes in the “R-1” Single-Family District were permitted to have up to two (2) roomers; single-family homes in the “R-2” Single-Family District and the “R-3” Single-Family and Two-Family District were permitted to have up to four (4) roomers. Two-family structures in the “R-3” District could have up to two (2) roomers in each dwelling unit. Therefore, in terms of a group of unrelated persons living together, some single-family dwellings were permitted to be occupied by up to three (3) persons (a one (1) person “family” and two (2) roomers) and other single-family dwellings to be occupied by up to five (5) persons (a one (1) person “family” and four (4) roomers) depending upon which single-family district they were located.

The City felt that this process was flawed for two reasons. First they felt that the family definition discriminated unfairly between married and unmarried couples. Secondly they felt that the different occupancy standards for single-family dwellings in different zones would unfairly target certain areas for rental housing to the exclusion of others and the number of roomers permitted in single-family houses in the “R-2” and “R-3” Districts was too high. As a result of these observations the family definition was changed to include two (2) unrelated persons and to limit the number of roomers in all single-family dwellings to up to two (2) persons and in two-family dwelling to up to three (3) persons per unit. These changes to the Code were ultimately adopted in **1975**.

In an attempt to counter the affect the 1970 downzoning had on the availability of student housing, the City proposed to create a high density housing ring around the downtown commercial core in **1986**. The intent was to permit new development and higher occupancies in the designated areas to alleviate some of the pressures to convert single-family, owner-occupied housing to rental units in the adjacent neighborhoods; however, public opposition led to its defeat. Without options for new multiple-family housing for students, the pressure on single-family neighborhoods continued.

Another major Zoning Map amendment occurred in **1995** when large areas of the City were downzoned from the R-3 to R-2. This was meant to prevent single-family dwellings from being converted to two-family dwellings for the purpose of obtaining additional occupancy for rental properties.

A **1995** text amendment to the Code restricted the occupancy of properties which do not meet all current lot standards – lot areas, lot width, building setbacks and coverage standards – to a family or two (2) unrelated persons. Only those properties which met all current Zoning standards could be occupied by the maximum of four (4) unrelated persons.

These initial amendments limited the allowed occupants a single-family home could be licensed for through dimensional requirements but did not make them nonconforming in use. The most significant Code amendment affecting occupancies in single-family rental properties occurred through the adoption of Ordinance 900 in **1997**. The Ordinance limited occupancy of single and two-family home within single-family residential districts (RA, R1, R2) to a family or two (2) unrelated person regardless of whether the properties were in conformance with the dimensional

requirements of the Code. This was the most significant impact to the creation of nonconforming rental properties in single-family residential districts.

After 1997, new rental license requests were restricted to a family or two (2) unrelated persons in all RA, R1, and R2 districts limiting the impact on the density in these neighborhoods. However, it was still a concern that some of the neighborhoods where the edge of the neighborhoods had been completely absorbed by rental properties would continue to be targeted for new rental properties. Although these neighborhoods had a considerable number of rental properties they continued to be predominantly owner-occupied thus preserving the character of the neighborhood.

In **2004**, the Residential Rental Restriction Overlay District, a citizen petition driven ordinance, was established as the City continued to see student rental properties infiltrating the neighborhoods with established single-family, owner-occupied homes in spite of Ordinance 900. The purpose of the overlay districts are to allow owners of property within R-1 and R-2 zoning district to further control the types of rental properties permitted in single-family dwellings within their neighborhood to help preserve the attractiveness, desirability, and privacy of residential neighborhoods by precluding all or certain types of rental properties and thereby avoiding the potential negative effects rental properties can have on a neighborhood with regard to property deterioration, increased density, congestion, noise and traffic levels and reduction of property values. The ordinance provides three levels of restrictions as described below:

1. R-O-1 District prohibits the issuance of any new rental licenses, including Class I rental licenses.
2. R-O-2 District allows owners to apply for a Class I rental license if the property was owned by the applicant at the time the overlay was approved. When properties are sold after the time in which the overlay was approved the property is no longer eligible to apply for a Class I rental license.
3. The R-O-3 District allows owners to apply for a Class I rental license; however, the property owner does not need to have owned the property prior to the approval of the overlay district.

Class I rental licenses are for owner-occupied properties where the owner wants to have a roomer reside with the owner and owner's family. All owners must own and reside at a property for at least 18 months prior to submission of a Class I rental license application.

The overlay restriction will not impact properties that already have a rental license. However, if a property owner allows a rental license on a property to remain expired for over 12 months then the property would lose any prior legal nonconforming (grandfathering) status.

In **2006**, the City Council asked the City Attorney to look into the possibility of amortizing existing nonconforming rental licenses so that the use of the properties could be brought into

conformity with the current density limitations contained in the Zoning Code. The outcome of this request was that beyond what was allowed by the nonconforming use language the City's hands were tied.

### **City Programs Initiated to Eliminate Nonconforming Rental Properties**

In **1999**, the City Council expressed an interest in controlling or regulating density in single-family residential neighborhoods through a program whereby rental housing licenses might be acquired by the City. It was determined that the cost of acquiring these properties would likely require multiple funding mechanisms. During this period students had fewer housing options because the rental housing market was not yet saturated. This meant that many of these rental licenses with an allowed occupancy for four (4) to five (5) persons were fully occupied regardless of their condition. Two major efforts have been made to date - Avondale Square and Campus Village - each demonstrate the difficulty and cost associated with eliminating nonconforming rental properties.

***The Avondale Square Project:*** In the early part of the 2000's, Staff began researching funding mechanisms to allow the City to purchase a full block of nonconforming rental properties located in a single-family district. After receiving a 2006 commitment for a loan guarantee through the US Department of Housing and Urban Development, the City began the process of purchasing the houses in the 600 block of Virginia Avenue, retiring the rental licenses permanently, tearing down the old houses, and building modern, energy efficient homes. Each of the new homes are deed restricted to owner-occupancy, with the exception of a pilot project allowing 'granny flat' apartments over the garages to be rented while the main structure is deed restricted to owner-occupancy. The project will at completion bring a total of 30 new owner-occupied homes to the block, both at market rate pricing and units specifically set aside for income qualified residents. The project has permanently removed 69 "beds" from nonconforming rental properties located in a one block area of a single-family district to reclaim the single-family character of the block.

***Campus Village – Rental Conversion Program:*** In 2006 the City and Campus Village East Lansing, LLC entered into a development agreement creating a unique approach to eliminate nonconforming rental licenses in the Chesterfield Hills neighborhood. Rental properties in the R-2 portion of the neighborhood were nonconforming and targeted for conversion to owner-occupancy. In exchange for providing brownfield redevelopment incentives for 1231 Michigan Avenue, Campus Village agreed to acquire a minimum of ten (10) licensed rentals and sell them as deed-restricted owner-occupied housing. Additional incentives were offered for the acquisition of more than ten (10) rentals. To date, seven (7) properties have been acquired and five (5) have had their rental licenses permanently terminated. Two (2) of the homes on Grand River Avenue are being rented temporarily until the housing market improves and a workable redevelopment solution is identified. After many years of the City assessing non-regulatory rental conversion programs, this was the first one to be implemented.

## Comprehensive Plan

The 2006 Comprehensive Plan has a clear focus on maintaining strong neighborhoods throughout the City. It stresses the importance of preserving the single-family neighborhood character and integrity through the removal of nonconforming rental licenses and by converting homes back to owner-occupied properties. It also emphasizes the need for quality student housing in close proximity to the University with an appropriate transition or buffer between owner-occupied and student rental properties where life-styles may conflict. Generally the objective for student housing is to redevelop aging single-family structures, in multiple-family zoning district, into multiple-family structures which are safe, in close proximity to the University, and are designed with the architectural character that fits the character and scale of the surrounding neighborhood. The following excerpts from the 2006 Comprehensive Plan characterize the City's desire as stated:

**Objective 1-1:** Increase the appeal of homes through the promotion of home improvement assistance and redevelopment programs.

**Action 1-1.2:** Amend certain zoning regulations related to renovation or expansion of existing single-family homes to provide more flexibility to homeowners while also tempering the amendments toward *preservation of neighborhood character and integrity*.

**Action 1-1.5:** Promote revitalization of the properties in the Delta Triangle (Collegeville), between Grand River Avenue and Michigan Avenue, to better serve the residents of the area. *Revitalized areas should complement the architecture of the area.*

**Action 1-1.8:** Evaluate the zoning regulations for neighborhoods in the City to *ensure that any redeveloped properties fit the character and scale of the neighborhood* while landscaping the properties in such a way to enhance the attractiveness of the neighborhood.

**Objective 1-2:** Promote incentives for the *conversion of homes from rental to owner-occupied homes*.

**Action 1-2.3:** *Explore the removal of rental licenses from neighborhood houses* using the Campus Village/Chesterfield Hills model.

**Objective 1-4:** Enhance the safety and comfort of residential neighborhoods.

**Action 1-4.1:** Provide *appropriate transitions between conflicting land uses*.

**Action 1-4.3:** Sustain the quality and enjoyment of residential areas *by preventing or managing detrimental noise impacts*.

**Objective 1-5:** *Support activities, policies and institutions that maintain neighborhood stability.*

**Action 1-5.2:** *Support rental limitation policies in areas that are not zoned for multiple-family dwellings.*

**Objective 2-2:** Work in collaboration with Michigan State University (MSU) to *ensure that suitable and safe student housing is available near campus.*

**Action 2-2.1:** In partnership with MSU and local landlords, *complete a market analysis of the changing student rental market.*

**Action 2-2.2:** Support *redevelopment of aging student housing structures* around the City, but particularly in the East Village and Delta triangle, *into new student housing* or mixed-market housing to accommodate the needs of current and future residents, both students and non-students.

**Objective 2-5:** Initiate programs which would result in greater diversity in housing costs.

**Action 2-5.1:** Implement recommendations of the Housing Needs Assessment, completed in 2003, such as pursuing zoning and community development tools *to create and preserve housing which is affordable for households in entry-level and service occupations*, expanding current housing rehabilitation efforts, and creating new *affordable housing for homeowners, renters, and special needs populations which will blend into pre-existing neighborhoods.*

### **City Programs and Policies to Develop Conforming Rental Properties**

The City has supported several developments in the last 10 years that provide rental units for students that meet the needs of the students and do not infringe on the needs of owner-occupied properties. These projects are in close proximity to the University complete with updated infrastructures such as parking and utilities. These projects include:

1. 137 Louis Street – 48 beds
2. 215 Louis Street – 48 beds
3. 241 Louis Street – 96 beds
4. Michigan Avenue, Campus Village – 354 beds
5. 128 Collingwood Avenue – 56 beds
6. 550 Michigan Avenue – 64 beds
7. Stonehouse Village – 54 beds



## **Analysis**

In the past, it was easier to reach 100% occupancy for a rental property which allowed occupancy for four (4) to five (5) persons in a single-family structure because there were not as many housing options for students and students were more willing to share rooms. As more opportunities become available in newer multiple-family structures in close proximity to the University, these units are likely going to be more difficult to attract four (4) to five (5) persons. Many of these properties were designed and built 30 or more years ago for single-family occupancy and do not meet the expectation of some students who expect more amenities. The landlords wish to improve the structures to make them more competitive and they imply that it will increase the value of the property and thereby the City's tax base.

Although these properties may not be generating the income expected by a structure licensed for four (4) to five (5) persons, Staff believes they fill an important niche in the City's student rental housing inventory. Because the properties don't have some of the preferred amenities, they are more affordable to the percentage of the student population that can't afford the rent associated with the amenities. Staff agrees with the landlords that if the properties were allowed to make structural changes to add bedrooms and bathrooms, the property value would increase leading to more taxes for the City. Conversely, it may also increase the rental rate for the property eliminating the affordable niche it previously filled. Most student rental properties are typically rented by a fee per bed or per student unlike other types of rental housing that have a rate per apartment. If a property licensed for four persons within three (3) bedrooms can only attract three (3) residents, the overall gross income for the property will go down so by adding a bedroom the landlord is likely to increase the gross income for the property. Additionally, increasing the rent will make the property more valuable to the landlord and less likely to eventually become conforming to the zoning district in which it is located. Eliminating nonconforming rental licenses in single-family districts and providing affordable rental properties is consistent with the Comprehensive Plan. The Plan suggests this be done by either reducing the occupancy of the rental license to allow a family or two (2) unrelated persons or by retiring the license and converting the property to an owner-occupied property.

There are two types of property improvements the landlords have discussed during deliberation on this topic. One is to allow a single-family rental property which is nonconforming in use to add a second story to the dwelling to accommodate additional bedrooms and bathrooms and the other is to allow the same in an unimproved basement of such property type.

The first scenario proposes to add a second story to a one-story structure resituating bedrooms which are currently in the basement thereby providing a higher quality environment for bedrooms. Many of these structures are 30 or more years old and often damp with ongoing mold problems which are difficult to address in older structures. Staff agrees that moving bedrooms out of damp basements would be a positive change. However after looking at the examples, which were provided to City Council, of structures previously modified it is Staff's opinion that these structures do not reflect the architectural scale or character of the neighborhood where they are located. This is inconsistent with the Comprehensive Plan which states the importance of

architectural scale and character when referring to development and redevelopment in the City's neighborhoods.

The second scenario proposes to add bedrooms and a bathroom in the basement to provide more finished living space. This is a situation that may not be easy to market and in some cases the reason for wanting to add a second story to the structure to remove these rooms. As mentioned before, it is Staff's opinion that basement bedrooms in older structures often have mold issues that are hard to address; therefore, not good environments for sleeping areas.

All of the changes to the zoning districts and to the code over time indicate that a higher concentration of student population in neighborhoods designed and developed for single-family use is problematic to the goal of preserving the character of the existing neighborhoods. Ordinance 900 limits new rental licenses to a family or two (2) unrelated persons which is the density that the City has determined is appropriate for single-family neighborhoods. Through this observation and the continued desire to ***balance the need for student housing and the desire to maintain strong, stable neighborhoods*** the community developed objectives and actions relative to single-family and multiple-family housing during the 2006 update to the City's Comprehensive Plan.

It is clear that the preservation of single-family neighborhood character is important whether it be for a renovation or a redevelopment. That such renovations and redevelopments have contextual architectural style at a scale characteristic to the neighborhood.

### **Staff Recommendation**

There is over a 30 year history of the City promoting programs and policies that limit the impact of rental housing on single-family residential districts while at the same time promoting programs and policies that encourage and help facilitate new rental housing in areas of the City that are more appropriate for such uses. This demonstrates a consistent pattern of the City adopting ordinances that restrict single-family districts to licensed occupancies of a family or two (2) unrelated persons. It also shows a history of the City's interest in utilizing planning tools to eventually eliminate nonconforming uses as they relate to rental licenses. The nonconforming use and structure clauses in the Code are intended to allow the continued use and the form of the structure as it was at the time the Code was amended but not encourage the use to continue by ***expanding*** and ***remodeling*** the structure.

For the reasons stated above, Staff cannot support an ordinance to add a sunset clause to nonconforming language in the Code to allow rental properties that are nonconforming in use to be exempt from the restrictions in section 50-853 of the Code. This action is not supported by 30 years of City action, the 2006 Comprehensive Plan and good planning practices which are supported by State Law. Staff continues to support a review of the current single- and multiple-family boundaries during the Comprehensive Plan update to determine whether it is the desire of the community to modify the single-family boundaries in the future to increase the multiple-

Memorandum - Nonconforming Use of Buildings

Page 11 of 11

September 20, 2012

family boundaries in certain areas of the City or create special redevelopment districts modeled after form-based code concepts.



## Article IX. Nonconforming Uses and Buildings

Sec. 50-851. - Continuation generally.

The lawfully permitted use of land or buildings existing at the time of the adoption of the zoning ordinance or any amendment thereto may be continued, although such use does not conform to the standards of the district in which such land or building is located. Such uses shall be deemed nonconforming uses.

Sec. 50-852. - Nonconforming use of land.

Where no structure is involved, the nonconforming use of land may be continued, provided however:

- (1) That no such nonconforming use shall be enlarged or increased, nor that it be extended to occupy a greater area of land than that occupied by such use at the time of the adoption of the zoning ordinance, unless specifically allowed by other provisions of this chapter.
- (2) That no such nonconforming use be moved in whole or in part to any other portion of the lot or parcel of land occupied by such nonconforming use at the time of the adoption of the ordinance from which this chapter is derived.
- (3) That if such nonconforming use of land, or any portion thereof, ceases for any reason for any continuous period of more than 30 days, or is changed to a conforming use, any future use of the land shall be in conformity with the provisions of this chapter.

Sec. 50-853. - Nonconforming use of buildings.

- (a) ~~A structure, the use of which does not conform to the use regulations for the district in which it is situated, Except for those nonconforming uses which do so prior to August 29, 2013, a nonconforming use~~ shall not be enlarged or extended to a greater area of the structure than was occupied at the time of the adoption of the zoning ordinance, unless the use therein is changed to a conforming use.
- (b) Except for those properties obtaining building permits to make such alterations prior to August 29, 2013, a ~~Such nonconforming~~ structure in which a nonconforming use is carried out shall not be structurally altered ~~or reconstructed~~ unless such alterations are required by law, provided, however, that such maintenance and repair work as is required to keep a nonconforming structure in sound condition shall be permitted.
- (c) A nonconforming use may be extended throughout any parts of the structure which were manifestly arranged or designed for such use at the time of the adoption of the

ordinance from which this chapter is derived, provided this extension was made within one year after the date of such adoption.

- (d) A nonconforming use of a structure may be changed to a conforming use.
- (e) *If any nonconforming use of a structure ceases for any reason for a continuous period of more than one year, or is changed to a conforming use, or if the structure in which such use is conducted or maintained is moved for any distance whatsoever, for any reason, then any future use of such structure shall be in conformity with the standards specified by the zoning ordinance for the district in which such structure is located.*
- (f) *If any structure in which any nonconforming uses are conducted or maintained is removed, the subsequent use of the land on which such structure was located, and the subsequent use of any structure thereon, shall be in conformity with the standards specified by the zoning ordinance for the district in which such land or structure is located.*
- (g) The conversion of any nonconforming single-family or two-family residential structure to a rental dwelling (licensed or unlicensed) for occupancy by other than a family or domestic unit (as defined by this chapter) shall be deemed a change which enlarges or extends the nonconforming use of a structure, except in the following circumstances:
  - (1) For so long as the owner of the structure, as of the date of adoption of the ordinance from which this chapter is derived, continues to reside in said structure; and/or
  - (2) For so long as the owner of the structure, as of the date of adoption of the ordinance from which this chapter is derived, continues to own said structure.

Sec. 50-854. - Nonconformity other than use.

A structure which is conforming in use but which does not conform to all of the other requirements of the zoning ordinance for the district in which said structure is located shall not be considered to be nonconforming with the meaning of section 50-853 and section 50-855. However, no permit shall be issued and no changes shall be made on the structure or the land on which such structure is located that will result in the increase of any such nonconformity.

Sec. 50-855. - Restoration of damaged buildings.

Whenever any structure legally nonconforming in use is damaged or destroyed by fire, explosion, wind, flood, or other catastrophe to an extent greater than its state equalized value as determined by the city assessor, then any future use of the building and land on which the building is located shall be in conformity with the regulations of the district in which such building is located.

- (1) Where such a building is damaged to an extent less than its assessed value, it may be rebuilt and the use continued, but not to any greater extent than in the previously existing building; but where such rebuilding can feasibly be done in greater conformity with this chapter in the opinion of the building official, he/she shall so require in any building permit, provided, that any such structure licensed as a rental on November 8, 1995, may be rebuilt to the extent necessary to retain the occupancy permitted by license on November 8, 1995.
- (2) Whenever a legally nonconforming residential structure which was licensed as a rental on November 8, 1995, is damaged to an extent greater than its state equalized value, such structure may be rebuilt and the use continued to the extent necessary to retain the maximum occupancy permitted by license on November 8, 1995; but the building official shall require in any building permit that such rebuilding shall otherwise be done so as to obtain the maximum conformity with this chapter which may be feasible for the permitted occupancy.

Sec. 50-856. - Registration of nonconforming use of land or buildings.

Any nonconforming use of land or structures may be registered in the office of the building official within one year after the adoption of the ordinance from which this chapter is derived. Such registration shall include the identification of the premises, a description of the nature and extent of the nonconforming use, and if necessary to the description, a plot plan, drawn to scale, showing property lines, all structures, and any other pertinent information, and an affidavit by the owner as to the date since which such nonconforming use has existed. Failure to so register shall place the burden of proof on the property owner that any alleged nonconforming use of land or structures legally existed at the time this chapter or any amendment thereto became effective.

Sec. 50-857. - Small lots owned separately.

Nothing in the area requirements of this chapter relating to lot width or area per family shall prohibit the erection of a one-family dwelling on a lot held under a separate and distinct ownership from contiguous lots and which has been under such separate and distinct ownership since a date prior to the 1960 zoning ordinance, even though such lot has less width or less area than the lot area per family requirement of this chapter for the district in which such lot is located, provided that all other regulations of the district are complied with.